IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (WCA) No.539 of 2003.
Judgment reserved on:23.04.2007.
Decided on: April 25, 2007

Jagdish Chand **…..Appellant.**

VERSUS

State of H.P. & Anr. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Appellant: **Mr.Virender Thakur, Advocate.**

For the Respondents: **Mr.M.L.Chauhan, Addl. A.G.**

Kuldip Singh, Judge.

This appeal has been directed against the order dated 4th September, 2002 passed by Commissioner Workmen's Compensation, Palampur in case No.5/99.

2. The brief facts of the case are that appellant alleged that he was employed by respondent No.2 as labourer. In May 1989 while appellant was metaling Holta – Banuri road, his eyes affected badly from the smoke of melted Tarcoal as a result of which he lost his eye sight. He was admitted in Eye Hospital, Maranda and was advised to get treatment at Rajindra Hospital, Patiala. After treatment his eye sight was restored. He incurred huge expenditure on the treatment.

---

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment ?Yes***

As per medical examination dated 5th September, 1992 he has 75% disability and was receiving Rs.307.50 wages per month. At the time of accident he was 35 years old. He claimed Rs.2 lacs compensation and expenses of treatment to the extent of Rs.1,50,000/-. The claim petition was barred by time, therefore, he filed an application for condonation of delay in filing the petition on the ground that he is illiterate and simple villager.

3. The respondent No.2 contested the claim on several grounds. It has been submitted that in May, 1989 the appellant left the job without giving any intimation to the Department. It is denied that appellant lost eye sight due to toxic flames of Tarcoal smoke. There is no record or intimation that appellant while working with the department was injured. In fact, no accident has taken place as alleged by the appellant.

4. The Commissioner while deciding Issue No.1 has held that appellant was workman, under Issue No.2 it has been held that eye sight of the appellant was not lost when he was working with the respondents. The Commissioner while deciding Issue No.3 has come to the conclusion that the delay has not been explained and the petition is time barred and while deciding Issue No.4 finding has been returned that appellant is not entitled to any compensation. The appellant has thus filed the present appeal.

5. I have heard the learned counsel for the parties and have also gone through the record.

6. The learned counsel for the appellant has submitted that appellant is a poor rustic villager. He was not aware about his right to file claim petition and in these circumstances, he filed the claim petition only on 10th December, 1998 when he came to know about his right to file the petition. Along with the petition, he also filed an application under Section 5 of the Limitation Act for condonation of delay in filing the claim petition. The learned counsel has also submitted that the evidence has not been properly appreciated by the Commissioner and, therefore, the Commissioner has committed an error of law in not condoning the delay and as well as dismissing the petition on merits also.

7. The learned Additional Advocate General has supported the impugned award. He has submitted that the claim petition was hopelessly time barred, delay has not been explained in accordance with law. There is no material on record to show that the appellant suffered loss of eye sight due to accident which took place during the course of his employment with the respondents. He prayed for dismissal of appeal.

8. In application under Section 5 of the Limitation Act, the claimant has not given any details for condonation of delay in filing the claim petition. The application for condonation of delay is vague and

it lacks material particulars. In the application it has been alleged that the appellant remained under medical treatment till 1993 but he was not aware about his right to file claim petition. He has not stated in the application when he came to know about his right to claim compensation. There is variance between the pleadings and proof for condoning the delay in filing the claim petition. In evidence, the appellant has named Surender Kumar from whom he came to know his right to file claim petition in 1998 but said Surender Kumar has not been produced to substantiate his plea.

9. The learned counsel for the appellant has placed reliance on ***The Trustees of Port of Bombay vs. The Premier Automobiles Ltd. & Another, AIR 1974 SC 923.*** The point before the Hon'ble Supreme Court in this case was the starting point of limitation under Section 87 of the Bombay Port Trust Act, 1879. This judgment is not on the condonation of delay for filing the petition, hence, it is not applicable in the instant case. The learned counsel has relied upon ***Bhuvneshwari Devi & Others vs. Murarilal & Another, 1986 Sim.L.C. 12***. In this judgment, the point for consideration was whether the condonation of delay application is to be supported by affidavits of all applicants or the affidavit of one applicant who is conversant with the facts is sufficient. This is not the point in issue in the present case, hence, no help can be taken by the appellant from this judgment. The learned counsel has also relied upon ***Vidya Devi vs. Himachal Road***

Transport Corporation & Others, 1989 (2) Sim.L.C. 215, wherein the delay was condoned for filing the claim petition. In this case this Court on the basis of evidence has come to the conclusion that claimant was continuously suffering from mental ailment right from the beginning till the filing of the petition which was filed through next friend. In addition to the mental ailment, the claimant was illiterate, poor, rustic village lady. The present case is not of mental ailment of the appellant nor he filed the claim petition through next friend. ***Vidya Devi's*** judgment (supra) is on facts of that case. The appellant has not proved sufficient cause for condonation of delay in the present case. The appellant has miserably failed to establish sufficient cause for condonation of delay in filing the claim petition. The Commissioner rightly did not condone the delay in filing the claim petition.

10. On merits, in the claim petition, it has been alleged that the appellant has suffered loss of eye sight due to smoke of Tarcoal when he was metaling Holta – Banuri road at the instance of respondent No.2 in May 1989. It has also been pleaded that later on his eye sight was restored after treatment at Rajindra Hospital, Patiala. On medical examination his disability has been shown 75% on 5th September, 1992. The appellant has appeared as his own witness as PW-1. He has stated that in May 1989 while he was doing patch work on the road some drops of liquid Tarcoal damaged his both eyes. He got treatment at different places. He ultimately got treatment at

Rajindra Hospital, Patiala and in 1992 eye sight in one eye was restored. He has 75% disability. In 1998 while working in Krishi Vishwavidhyalaya Canteen Surender Kumar told him that he can claim compensation under the Workmen's Compensation Act. Thereafter he filed the claim petition. PW-3 Dharam Singh has stated that he was Mate when appellant was working in PWD. The accident had taken place in his presence in May 1989. The eyes of the appellant were damaged due to the smoke of Tarcoal.

11. Ext.P-1 dated 5th June, 1995 is only to the effect that Executive Engineer has informed the appellant that in view of his disability the Department is not in a position to give him employment. Ext.PW-2/A is the copy of extract of Indoor Register of July 1990 of Mela Mal Sood Rotary Hospital Maranda, Palampur. In this document names of four patients including the appellant have been mentioned. The diagnosis of the disease of appellant has been shown Malignant Glucoma and date of admission is 4th July, 1990 and discharge 1st August, 1990. The defect in the eyes of the appellant has not been attributed to smoke injury or similar injury, rather it has been mentioned Malignant Glucoma which is entirely a different disease. The department has no record regarding alleged injury of appellant suffered by him while working on road. There is no other evidence on record to show that the appellant suffered injury in his eyes during the course of employment with respondent No.2. The appellant has failed

to make out any case for interference in the appeal. Moreover, the appeal under Section 30 of the Act is to be considered only on some substantial question of law. The appeal has not been admitted on any substantial question of law and otherwise also no question of law much less any substantial question of law is involved which require determination by this Court.

12. No other point was urged.

13. In view of above discussion, the appeal is dismissed and the impugned order is upheld. The parties are left to bear their own costs.

(Kuldip Singh)
Judge.

April 25, 2007
(soni)